

**Memorandum of Decision: 04-20191136R
Gross Retail Tax
For the Years 2016 and 2017**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Indiana Manufacturer provided information sufficient to confirm that it was entitled to an additional refund of sales tax paid on the purchase of electric utilities; Indiana Manufacturer established that the meter number corresponded to the claimed exempt utility usage.

ISSUE

I. Gross Retail Tax - Refund Documentation.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-5-1; IC § 6-8.1-5-4(a); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); [45 IAC 2.2-4-13\(a\)](#).

Taxpayer argues that it timely presented the Department with documentation sufficient to verify that it was entitled to a refund of sales tax paid on the purchase of exempt utilities.

STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of manufacturing and selling communication devices. Taxpayer submitted a form GA-110L (Claim for Refund) dated December 2018 requesting the return of approximately \$2,600 of sales tax paid to its electric utility provider during 2016 and 2017. The Indiana Department of Revenue ("Department") reviewed the claim and forwarded Taxpayer a follow-up letter dated March 2019. In that letter the Department stated that the Department "does not have record of an exemption for meter [2520]. Proof of the exemption or an ST-200 application and utility study is needed."

Taxpayer received a portion of other originally requested refunds attributable to 2015, 2018, and 2019. However, the Department denied a portion of the 2016 and 2017 refund in a letter dated May 2019. The letter explained that the Department "reviewed the claim and denies the claim in full in the amount of [\$2,600]. . . . Taxpayer failed to provide the Department with proof of the exemption for electric meter [2520] or an ST-200 application and utility study."

Taxpayer disagreed with the Department's decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Memorandum of Decision results.

I. Gross Retail Tax - Refund Documentation.

DISCUSSION

The issue is whether Taxpayer has established it provided the Department information sufficient to verify that it was entitled to the additional refund of Indiana sales tax. The Department's position is that the information requested in its March 2019 letter was not provided; Taxpayer's position is that it faxed the Department the information in March 2019 and that it subsequently emailed the same information in April 2019.

As a business engaging in retail transactions, Taxpayer is required to maintain accurate financial records. "Every person subject to a listed tax must keep books and records so that the [D]epartment can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." IC § 6-8.1-5-4(a). In bringing a matter to protest such as that raised here by Taxpayer, the petitioner is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and

non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, interpretations of Indiana tax law contained within this decision, as well as the preceding audit decision, are entitled to deference.

Indiana sales tax is imposed pursuant to IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

IC § 6-2.5-1-27 classifies electricity as "tangible personal property."

"Tangible personal property" means personal property that:

- (1) can be seen, weighed, measured, felt, or touched; or
- (2) is in any other manner perceptible to the senses.

The term includes electricity, water, gas, steam, and prewritten computer software.

In the case of electrical usage, [45 IAC 2.2-4-13\(a\)](#) explains:

In general, the furnishing of electricity, gas, water, steam, or steam heating services by public utilities to consumer is subject to tax.

IC § 6-2.5-5-5.1 provides an exemption on the purchase of electric utilities which is consumed in the production of tangible personal property. The statute provides in relevant part:

- (a) As used in this section, "tangible personal property" includes *electrical energy*, natural or artificial gas, water, steam, and steam heat.
- (b) Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct consumption as a material to be consumed in the *direct production of other tangible personal property* in the person's business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture. This exemption includes transactions involving acquisitions of tangible personal property used in commercial printing.

(*Emphasis added*).

Taxpayer explains that there are three different meter numbers at issue all of which are - or were - attached to the same electric consumption. The utility company changed the meter number on two different occasions. The first and earliest number ends with 3372. The Department granted refunds on the purchase of electricity measured through that 3372 meter. The utility company switched out the meter in 2015 and gave it a new number ending with 2520. The utility company *again* changed the meter in 2018 and gave it yet another number ending with 1029. The Department granted Taxpayer a refund on electricity measured through that 1029 third meter.

In this case, the refund is attributable to the second meter designated with the number ending 2520. In this case, Taxpayer has met its burden of establishing that it forwarded the necessary information by email and that the electricity purchased through and measured by meter 2520 is exempt. Although the physical meter has changed from year to year, the usage is evidently the same, the Taxpayer is the same, the location is the same, and the grounds for the refund are the same from meters 3372 to 2520 to 1029.

FINDING

Taxpayer's protest is sustained.

September 9, 2019

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